

Subsidiary Legislation made under s.11 & Sch.3 and s.5 of the European Union Withdrawal (Application of International Agreements) Act 2019.

**QUALITY ASSURANCE (INTELLECTUAL PROPERTY) (EU EXIT)
(No.2) REGULATIONS 2019**

LN.2019/207

Commencement

1.1.2021

ARRANGEMENT OF REGULATIONS.

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**SCHEDULE
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In exercise of the powers conferred on him by section 11 and Schedule 3 to the European Union (Withdrawal) Act 2019 and section 5 of the European Union Withdrawal (Application of International Agreements) Act 2019 the Chief Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Quality Assurance (Intellectual Property) (EU Exit) (No.2) Regulations 2019.

Commencement.

2. These Regulations come into operation on exit day.

Scope.

3.(1) These Regulations provide for the recognition of, and confer enforcement powers in relation to, protected rights that-

- (a) fall within the scope of an international agreement listed in Schedule 1 to the European Union Withdrawal (Application of International Agreements) Act 2019; or
- (b) are specified in subregulation (2).

(2) The following are specified for the purposes of subregulation (1)(b) -

- (a) geographical indications that are included in a register maintained in the United Kingdom under-
 - (i) Article 11 of Regulation (EU) No.1151/2012,
 - (ii) Article 104 of Regulation (EU) No 1308/2013,
 - (iii) Article 21 of Regulation (EU) 251/2014, or
 - (iv) Article 33 of Regulation (EU) 2019/78; and
- (b) geographical indications that not included in a register referred to in paragraph (a) but which are recognised and enforceable in the United Kingdom as though they were so registered.

Interpretation.

4.(1) In these Regulations-

“Act” means the Fair Trading Act 2015;

“Consumer Protection Enforcer” and “CP enforcer” means a person appointed under section 34 of the Act;

“listed agreement” means an agreement listed or described in the Schedule to the European Union Withdrawal (Application of International Agreements) Act 2019;

“Minister” means the Minister with responsibility for Commerce;

“premises” includes any establishment, place, vehicle, stall or movable structure and any ship or aircraft;

“protected rights” means any intellectual property right falling within regulation 3(1) that is protected in the United Kingdom or falls within the scope of a listed agreement;

“register” means a register listed in regulation 3(2)(a) and “registered” is to be construed accordingly;

“registrar” means the person appointed to maintain a register;

“Regulation (EU) No 1151/2012” means Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, as the same may be from time to time amended;

“Regulation (EU) 1308/2013” means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007;

“Regulation (EU) No 251/2014” means Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91;

“Regulation (EU) 2019/787” means Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural

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origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008, as the same may be from time to time amended.

(2) The term “protected right” defined to in subregulation (1) does not include the following intellectual property rights trade marks, patents, designs, copyright and exhaustion of rights.

Effect and evidence of entitlement to protection.

5.(1) Protected rights falling within regulation 3(2) shall enjoy in Gibraltar the like privileges and rights as though the registration (including the deemed registration) in the United Kingdom had been issued with an extension to Gibraltar.

(2) A copy of a listed agreement that includes a protected right is, unless the contrary is proved, evidence of a protected right.

Exercise of powers.

6. Where an CP enforcer officer has reasonable grounds to believe that there has been or that there will be an infringement of protected rights that officer may exercise any powers available to that officer under these Regulations.

Compliance notice.

7.(1) A CP enforcer may serve a notice in writing on any person if the CP enforcer has grounds for believing that the person-

- (a) has marketed, or is marketing or intending to market, a product which has been labelled in a way that infringes a protected right;
- (b) has made, or is making or intending to make, any direct or indirect commercial use of a term in a way that infringes a protected right;
- (c) has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a term in a way that infringes a protected right;
- (d) has used, or is using or intending to use, any other false or misleading indication as to the provenance, origin, nature or essential qualities of a product in a way that infringes a protected right;
- (e) has used, or is using or intending to use, any other practice that is liable to mislead the consumer as to the true origin of a product in a way that infringes a protected right;

(f) has undertaken any act that, if that act had occurred in the United Kingdom, would have infringed a protected right.

(2) In subregulation (1) “term” means a protected designation of origin, a protected geographical indication and a traditional speciality guaranteed as defined in the United Kingdom by retained EU law.

(3) A notice served under subregulation (1) must contain the following-

- (a) the name and address of the person on whom the notice is served;
- (b) the grounds for service of the notice;
- (c) information on the steps the person must take to comply with the notice;
- (d) except to the extent that the steps are confined to refraining from doing something believed to be intended, the period within which each step must be completed in order to comply with the notice, which must not expire before the period within which an appeal may be brought under regulation 12;
- (e) information as to the-
 - (i) rights of appeal;
 - (ii) scope for suspension of a notice pending appeal;
 - (iii) consequences of an appeal;
 - (iv) consequences of a failure to comply with the notice.

(4) Subject to regulation 12, the person on whom the notice is served must comply with the notice.

(5) A notice served under this regulation is referred to in these Regulations as a compliance notice.

Importation.

8. The Collector of Customs may refuse the entry into Gibraltar of any goods the importation of which would infringe a protected right if they are placed on the market.

Powers of entry.

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9.(1) A CP enforcer may exercise the powers of entry under section 36 and 37 of the Act subject to the following-

- (a) the power of entry is in connection with a reasonable suspicion of an infringement of a protected right;
- (b) in section 36(1)(b)(ii), the reference to “an appropriate notice under section 24” were substituted for “if reasonable notice were given”;
- (c) for the purposes of section 37 any act that is contrary to the provisions of these Regulations is deemed to constitute business practices carried on which significantly harm consumer interests.

(2) A CP enforcer may-

- (a) be accompanied by such other persons as the CP enforcer considers necessary;
- (b) bring on to the premises such equipment as the CP enforcer considers necessary.

Powers of CP enforcers on entry.

10.(1) A CP enforcer who has entered premises under sections 36 or 37 of the Act may, in addition to the provisions of those sections-

- (a) inspect and search the premises;
- (b) take photographs;
- (c) mark any item for identification purposes;
- (d) require the production of any label, document or record (in whatever form it is held);
- (e) inspect and take a copy of, or take a copy of an extract from, any label, document or record;
- (f) inspect and open any container, item or vending machine;
- (g) inspect any plant, machinery or equipment;
- (h) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with a label, document or record to which this regulation relates;

- (i) where a label, document or record is kept by means of a computer, require the label, document or record to be produced in a form in which it may be taken away;
- (j) seize and detain any computer equipment for the purpose of copying any data or for further inspection where adequate inspection has not been able to be carried out on the premises, if the CP enforcer has reason to believe that a person is in contravention of these Regulations and that the data may be relevant to the contravention;
- (k) seize and detain potential evidentiary material, that is to say, any label, document, record, equipment, container or item if the CP enforcer has reason to believe that a person is in contravention of these Regulations and that the potential evidentiary material may be relevant to the contravention.

(2) A CP enforcer may require any person to provide the CP enforcer with such assistance, information or facilities as the CP enforcer may reasonably require for the purposes of the execution or enforcement of these Regulations.

(3) Anything seized and detained under subregulation (1) by a CP enforcer needed in connection with a possible contravention of these Regulations may only be held for as long as necessary and when the CP enforcer determines it is no longer required the CP enforcer must return it as soon as reasonably practicable.

Penalty notice.

11.(1) Where a person-

- (a) fails to comply with a compliance notice;
- (b) has obstructed a CP enforcer acting pursuant to regulations 7 or 10; or
- (c) has failed to comply with a requirement of a CP enforcer acting pursuant to regulation 10(1)(d), (i) or (2),

a CP enforcer may, by way of serving a written notice (a penalty notice) on the person, impose a requirement to pay such sum as the CP enforcer may specify in respect of that act or omission.

(2) The amount payable must not exceed £40,000.

(3) A penalty notice served under subregulation (1) must contain the following-

- (a) how and where the penalty must be paid;

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- (b) the name and address of the person on whom the notice is served;
- (c) the grounds for serving the notice;
- (d) the amount of the penalty;
- (e) the period within which the penalty must be paid, which must not expire before the period within which an appeal may be brought under regulation 12;
- (f) whether any discount is offered for early payment, and if so-
 - (i) the amount of the discount;
 - (ii) the period within which the penalty must be paid to take advantage of the discount;
- (g) information as to-
 - (i) the rights of appeal;
 - (ii) the scope for suspension of a notice pending appeal;
 - (iii) the consequences of failing to comply with the notice.

(4) Subject to regulation 12, the person on whom the notice is served must comply with the notice.

(5) If the requirements of the compliance notice are met before the payment period set out in the non-compliance penalty notice expires, liability to pay the non-compliance penalty is discharged.

(6) A notice served under this regulation is referred to in these Regulations as a non-compliance penalty notice.

(7) Any money owed under a notice may be recovered as a civil debt owed to the Government of Gibraltar.

Appeals against notices.

12.(1) A person on whom a compliance notice or a penalty notice has been served may appeal to the Magistrates' Court.

(2) The effect of a compliance notice or a penalty notice served under these Regulations is not suspended pending the determination or withdrawal of an appeal unless the Magistrates' Court directs otherwise.

(3) On an appeal under this regulation the Magistrates' Court may either cancel or affirm the compliance notice or the penalty notice and, if the court affirms that notice, it may do so either in its original form or with such modifications as the court thinks fit.

Protection of officers acting in good faith.

13. A CP enforcer is not personally liable in respect of any act done-

- (a) in the execution or purported execution of functions under these Regulations; and
- (b) within the scope of the CP enforcer's employment,

if the CP enforcer acted in the honest belief that the duty under these Regulations required or entitled the officer to so act.

Revocation.

14.(1) The Quality Assurance (Intellectual Property) Regulations 2019 are revoked.

(2) The Quality Assurance (Intellectual Property) (EU Exit) Regulations 2019 are revoked.

(3) The retained EU legislation set out in the Schedule is revoked.

Savings and transitional provisions.

15.(1) An enforcement notice issued under the Quality Assurance (Intellectual Property) Regulations 2019 is deemed to have been issued under these Regulations and has full force and effect.

(2) Any proceedings commenced under the Quality Assurance (Intellectual Property) Regulations 2019, including any appeal, must continue as though these Regulations had not come into operation.

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SCHEDULE

Regulation 14(2)

REVOCATION OF RETAINED EU LAW

Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.

Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules.

Commission Delegated Regulation (EU) No 665/2014 of 11 March 2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term ‘mountain product’.

Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs.

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Commission Delegated Regulation (EU) 2017/670 of 31 January 2017 supplementing Regulation (EU) No 251/2014 of the European Parliament and of the Council as regards the authorised production processes for obtaining aromatised wine products.

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.

Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.